IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.6359 of 2016
and
W.M.P.No.6857 of 2016

B.Arunkumar .. Petitioner

Vs.

1.Deputy Commissioner of Income Tax,
Circle-I, Ootacamud,
Christo Building,
2nd Floor,
State Bank Road,
Ooty- 643 001.

2.The Commissioner of Income tax,
No.63, Race Course Road,
Coimbatore - 641 018.

3.The Commissioner of Income Tax (Appeals)-III,
No.63, Race Course Road,
Coimbatore - 641 018.

4.Tamil Nadu Mercantile Bank,
Mettupalayam branch,
Sai Towers (Opp. C.S.I Church),
Ooty Main Road,
Mettupalayam,
Coimbatore - 641 301
represented by its Branch Manager.

5.Canara bank,
Erode Branch,
St.Mary's Building,
Tolamalai Road, Talavady,
Erode
Represented by its Branch Manager.

6.Indian Overseas Bank,
Mettupalayam branch,
Coimbatore - 641 301,
Represented by its Branch Manager. ..Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus forbearing the respondents 1 and 2 from carrying on any recovery proceedings/ attachment proceedings against the petitioner under section 226 of the Income Tax Act, 1961, pending disposal of stay petition filed before the 3rd respondent.

For Petitioner	:	Mr.Niranjan Rajagopalan
For Respondents	:	Mr.T.Pramod Kumar Chopda Sr.Standing Counsel for I.T. for R1 to R3

O R D E R

Mr.T.Pramod Kumar Chopda, learned Senior Standing Counsel for Income Tax takes notice for respondents 1 to 3. Notice to the respondents 4 to 7 is dispensed with since the order in this writ petition is not going to affect their interest in any manner.

2. By consent of all the parties, namely, the petitioner and the respondents 1 to 3, the main writ petition is taken up for final disposal.

3. The petitioner seeks for Mandamus forbearing the respondents 1 and 2 from carrying on recovery proceedings/ attachment proceedings, pending disposal of the stay petition filed by the petitioner before the 3rd respondent.

4. The grievance of the petitioner is that when the petitioner has filed an appeal against the order of assessment and also sought for interim stay of the same by filing the application before the appellate authority, namely, the 3rd respondent and when such application is still pending for consideration, the respondents 1 and 2 are not justified in proceeding with recovery /attachment proceedings by invoking section 226 of the Income Tax Act, 1961.

5. It is not in dispute that the petitioner originally moved stay application before the assessing authority and such application was ordered by imposing certain conditions. It is stated that the petitioner, aggrieved against such order imposing condition, filed the stay petition before the Appellate Authority along with the regular appeal filed against the assessment order. When that being the factual position, it is for the 3rd respondent to consider such application and pass orders on the same on merits and in accordance with law without loss of further time. It is made clear that this Court is not expressing any view on the claim made by the petitioner on the merits of the assessment as well as the order passed by the

assessing authority imposing certain conditions for grant of stay, as it is for the appellate authority to consider and decide.

6. Learned counsel for the respondents 1 to 3 submitted that the appellate authority, namely, the 3rd respondent will take up the stay petition and dispose of the same within a period of seven days.

7. Considering the above stated facts and circumstances and the submissions made by the learned counsel appearing on either side, this writ petition is disposed of by directing the 3rd respondent to dispose of the Stay petition filed by the petitioner on its own merits and in accordance with law within a period of seven days from the date of receipt of a copy of this order. Accordingly, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1.Deputy Commissioner of Income Tax,
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Ooty- 643 001.

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+1cc to M/S. T. Pramodkumar Chopda, Sr. 16204

W.P.No.6359 of 2017

NR(CO)
VR(16/03/2017)